



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,699	02/14/2001	Manuel Enrique Benitez	OMNI0002	3149

20995 7590 06/16/2004

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

EL CHANTI, HUSSEIN A

ART UNIT	PAPER NUMBER
----------	--------------

2157

DATE MAILED: 06/16/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,699

Applicant(s)

BENITEZ ET AL.

Examiner

Hussein A El-chanti

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date 2. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to application filed on Jan. 14, 2001. Claims 1-45 are pending examination.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 16 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "in the same manner as if" in claim 1, 16 and 31 is a relative term which renders the claim indefinite. The term "in the same manner as if" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-9, 11-14, 16 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Franco et al., U.S. Patent No. 6,687,745 (referred to hereafter as Franco).

As to claims 1, 16 and 31, Franco teaches a process, apparatus and program storage medium for intelligent server streaming of conventionally coded application programs across a computer network while concurrently executing said application programs on a client in a computer environment, comprising the steps of:

installing a portion of an application program on said client (see col. 4 lines 48-col. 5 lines 5);

providing an application server; partitioning said application program into appropriate page segments on said application server (see col. 4 lines 48-col. 5 lines 5);

wherein said application server streams said page segments to said client upon said client's request (see col. 5 lines 5-45);

executing said application program on said client; wherein the user starts said application program in the same manner as if said application program were fully installed on said client (see col. 5 lines 5-45);

wherein specific page segments are requested by said client's file system during execution of said application program (see col. 5 lines 5-45);

and storing said page segments in a cache on said client (see col. 5 lines 5-45).

As to claim 2, Franco teaches the process of claim 1, wherein said application program is not recompiled, rewritten, or rebuilt for this specific delivery mechanism (see col. 5 lines 5-45).

As to claim 3, Franco teaches the process of claim 1, wherein said client manages said cache by purging page segments that are stale or not needed (see col. 5 lines 5-45).

As to claim 4, Franco teaches the process of claim 1, wherein said client does not request page segments of said application program that already reside in said cache (see col. 5 lines 5-45).

As to claim 5, Franco teaches the process of claim 1, further comprising the step of: providing a subscription server; and wherein the user subscribes or unsubscribes to application programs with said subscription server (see col. 7 lines 62-col. 8 lines 15).

As to claim 6, Franco teaches the process of claim 1, further comprising the step of: providing a license server; and wherein said client obtains an access token for a

requested application program from said license server if the user has a valid subscription to said requested application program (see col. 25).

As to claim 7, Franco teaches the process of claim 6, wherein said access token contains an expiration tag (see col. 26 lines 23-37).

As to claim 8, Franco teaches the process of claim 6, wherein said access token is securely encrypted (see col. 25).

As to claim 9, Franco teaches the process of claim 6, wherein said client passes said access token to said application server before requesting page segments of said application program (see col. 5).

As to claim 11, Franco teaches the process of claim 1, further comprising the step of: providing a profile information database characterizing the typical page segment needs of each application program on said application server (see col. 7-col. 8).

As to claim 12, Franco teaches the process of claim 11, wherein said profile information database is updated dynamically as page segments are requested from said application server (see col. 7-col. 8).

As to claim 13, Franco teaches the process of claim 11, wherein said client prefetches page segments of said application program from said application server based on the profile information of said application program (see col. 7-col. 8).

As to claim 14, Franco teaches the process of claim 11, wherein said application server pushes page segments of said application program to said client based on the profile information of said application program (see col. 7-col. 8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oehrke et al., U.S. Patent No. 6,735,631 (referred to hereafter as Oehrke).

As to claim 10, Franco teaches a process for intelligent server streaming comprising installing a portion of an application program on said client and providing an application server (see the rejection of claim 1).

Franco does not explicitly teach the limitation "if said license server fails said client automatically switches to another license server". However Oehrke teaches a load balancing method and system where if a server fails, the system selects another server to provide the requested content (see abstract).

It would have been obvious for one of the ordinary skill in the art at the time of the invention to modify Franco by incorporating the step of switching to another server in case of a failure as taught by Oehrke because doing so would make the system more

efficient where the network of service providers always running even in the case of a server failure.

As to claim 15, Oehrke teaches the process performs load balancing among a plurality of application servers for page segment requests (see abstract).

6. Claims 17-30 and 32-45 do not teach or define any additional limitation over claims 1-16 and 31 and therefore are rejected for similar reasons.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Content Provider For Full Based Intelligent Caching System by Burns et al., U.S. Patent No. 6,275,496
- Automatic Software Downloading From A Computer Network by Parthasarathy et al., U.S. Patent No. 6,347,398

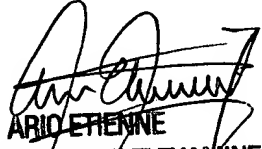
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hussein A El-chanti whose telephone number is (703)305-4652. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703)308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hussein El-chanti

June 4, 2004


ARID ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100